



1 STATEMENT OF RELEVANT FACTS

2 On September 8, 2005, at approximately 8:40 p.m., pursuant to a federal search  
3 warrant, Drug Enforcement Administration officers along with Guam law enforcement  
4 officers executed a search of the Guam Reef Hotel, Room 755, 1317 Pale San Vitores Road,  
5 Tumon, Guam.

6 At approximately 8:45 p.m., defendants arrived by elevator at the seventh floor of the  
7 Guam Reef Hotel. Immediately upon the elevator doors opening, defendants were seized by  
8 law enforcement officers and pushed up against a wall. A pat-down search of the person of  
9 each of the defendants was performed by law enforcement officers. Immediately after  
10 determining that defendants were not in possession of weapons, law enforcement officers  
11 began to question defendants about the reason for their being on the seventh floor of the hotel.  
12 Law enforcement officers suspected that defendants were in the area for drug related activities  
13 concerning room 755. The law enforcement officers began to question the defendants about  
14 their reasons for being at the Guam Reef Hotel. Defendant Guerrero was asked if he was  
15 aware of the drug lab and persons found in room 755. Defendant Guerrero denied knowledge  
16 of the existence of the activities in room 755. Law enforcement officers then asked where  
17 defendants were going, to which Defendant Guerrero responded by giving a room number.  
18 Law enforcement officers took Defendant Guerrero to the room identified, knocked and after  
19 a brief time awaiting a response, told Defendant Guerrero that he was lying and continued to  
20 question Defendant Guerrero about drug activities. Law enforcement officers moved  
21 Defendant Guerrero to another part of the hotel separated from codefendant RENEA  
22 DORLEEN TAITANO, and continued to question Defendant Guerrero. Defendant Guerrero  
23 was told that he was not free to leave and was being physically held by law enforcement  
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1 officers. After repeated questioning, law enforcement officers elicited inculpatory statements,  
2 from Defendant Guerrero. Law enforcement officers did not advise Defendant Guerrero of  
3 Defendant's U.S. Constitutional rights as required by U.S. v. Miranda, 384 U.S. 436, 468-69,  
4 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966) until 12:30 a.m., on September 9, 2005.

## 5 DISCUSSION OF LAW

### 6 **1. ILLEGAL SEIZURE OF DEFENDANT'S PERSON.**

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8 The United States Constitution, Fourth Amendment, provides; "The right of the people  
9 to be secure in their houses, papers, and effects, against unreasonable searches and seizures,  
10 shall not be violated and no warrant shall issue, but upon probable cause, supported by oath or  
11 affirmation, and particularly describing the place to be searched, and the persons or things to  
12 be seized.

13 U.S. Constitution, amendment IV.

#### 14 **1.1 Standing of Defendant JUSTIN KEITH GUERRERO.**

15 It is quite plain that the Fourth Amendment governs 'seizures' of the person. Terry v.  
16 Ohio, 392 U.S. 1, 16 (1968). Here the person seized about which Defendant Guerrero  
17 complains is his person. Therefore, Defendant has standing to assert his rights under the  
18 Fourth Amendment relating to the illegal seizure of his person.

#### 19 **1.2 Initial seizure of Defendant GUERRERO at the hotel elevators.**

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21 [A] police officer may in appropriate circumstances and in an appropriate manner  
22 approach a person for purposes of investigating possible criminal behavior even though there  
23 is no probable cause to make an arrest. Terry v. Ohio, 392 U.S. 1, 22 (1968). In Terry, we  
24 held that an officer may, consistent with the Fourth Amendment, conduct a brief,  
25 investigatory stop when the officer has a reasonable suspicion that criminal activity is afoot. .

1 . . While reasonable suspicion is a less demanding standard than probable cause and requires  
2 a showing considerably less than preponderance of the evidence, the Fourth Amendment  
3 requires at least a minimal level of objective justification for making the stop. . . . The officer  
4 must be able to articulate more than an inchoate and unparticularized suspicion or hunch of  
5 criminal activity. Illinois v. Wardlaw, 528 U.S. 119, 123-124 (2000). The Fourth Amendment  
6 permits limited investigatory stops where there is some reasonable, articulable and objective  
7 manifestation that the person seized is, or is about to be, engaged in criminal activities. . . .  
8 In order to determine if reasonable suspicion existed to justify an investigatory stop, the court  
9 must consider the facts available to the officer at the moment of the seizure. U.S. v. Smith,  
10 217 F.3d 746, 749 (9<sup>th</sup> Cir. 2000). [R]easonable suspicion must not be based on broad profiles  
11 which cast suspicion on entire categories of people. . . . The rationale upon which the  
12 reasonable suspicion doctrine is based, a doctrine that thwarts the notion of liberty and  
13 freedom from state intrusion in a mobile society, must be founded on an objective basis for  
14 suspecting that a particular person is engaged in criminal activity, lest we sweep many  
15 ordinary citizens into a generality of suspicious appearance merely on hunch. . . . Reasonable  
16 suspicion can not rest upon the hunch of an experienced officer, even if the hunch turns out  
17 right. The requirement of objective fact to support an inference of wrongdoing eliminates the  
18 need to deal with a police stop that rests on constitutional intuition.” U.S. v. Jimenez-Medina,  
19 173 F.3d 752, 756 (9<sup>th</sup> Cir. 1999).

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21  
22 The police grabbed Defendant GUERRERO and his codefendant as the doors to the  
23 elevator of the seventh floor of the Guam Reef Hotel opened. Law Enforcement officers  
24 immediately pushed these persons up against a wall and began searching their persons. No  
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1 particularized suspicion of criminal activity by these defendants could have been formed by  
2 the officers seizing the defendants. While dishonest in substance, Officer Cho reports;

3           At approximately 8:45 p.m., a couple, later identified as Justin Keith GUERRERO  
4 and Renea Dorleen Cruz TAITANO, was observed exit the elevator on the 7<sup>th</sup> floor  
5 and walk towards Room 755. At this time, LOVE (one of the persons seized in the  
6 room of the hotel which was being used as a drug lab) who was sitting in a chair by  
7 the elevator saw GUERRERO and TAITANO and turned her face immediately to the  
8 other way by lowering her body as if she was trying to hide from them. Officers asked  
9 LOVE if she knew GUERRERO and TAITANO. LOVE replied no. Based on  
10 LOVE's unusual body language and reaction towards GUERRERO and TAITANO,  
11 Officers approached and identified themselves to GUERRERO and TAITANO as  
12 police officers. Officers then told GUERRERO and TAITANO that there was on-  
13 going narcotics investigation and what room they were going as Officers were  
14 escorting them away from the methamphetamine lab for their own safety.  
15 GUERRERO and TAITANO were not able to give answer and appeared to be very  
16 nervous.  
17

18           Assuming arguendo, that the seizure was based on these articulable facts, (1) LOVE  
19 turned her face away from defendants, (2) LOVE appeared to be hiding from defendants, (3)  
20 LOVE said she did not know defendants, and (4) after being seized by police and escorted  
21 away from the location that they were heading and being told that the reason was because a  
22 drug lab was found and the removal was for their safety, defendants appeared very nervous.  
23

24           These facts give rise to no more than a hunch of possible criminal activity by  
25 defendants. Most people arrested by police lower and hide their faces out of the

1 embarrassment of being arrested. If someone sought to warn another of their arrest, it is more  
2 reasonable to assume that the person would demonstratively make themselves known to the  
3 unsuspecting other person. Police could no more determine whether LOVE was lying when  
4 she said "no," then whether she was telling the truth. Further, it is completely reasonable that  
5 a person being informed that they are in a dangerous location and escorted away by police  
6 would be very nervous, fearful for their personal safety. There simply was nothing more than  
7 a hunch of criminal activity giving rise to the seizure of the Defendants based on these  
8 assumed and untruthful facts.  
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10 The true facts disclose a more egregious unlawful seizure. The defendants arrived at  
11 the 7<sup>th</sup> Floor of the Guam Reef Hotel in an elevator stopping at that floor. They were  
12 immediately seized by police, pushed up against a wall, frisked and then interrogated. The  
13 mere arrival at the 7<sup>th</sup> Floor can not arise to reasonable suspicion of criminal activity  
14 involving the defendants in the mind of a reasonably prudent person.

## 15 **2. CUSTODIAL INTERROGATION OF DEFENDANTS.**

16 The facts asserted in the police report of Officer Cho evidence that the defendants  
17 were restricted of movement by police and not free to leave. See Thompson v. Keohane, 516  
18 U.S. 99, 112 S. Ct. 457, 133 L. Ed. 2d 383 (1995). Custody determination for *Miranda*  
19 purposes requires two discrete inquires, first, what were the circumstances surrounding the  
20 interrogation; and second, given those circumstances, would a reasonable person have felt he  
21 or she was not at liberty to terminate the interrogation and leave. Once the scene is set and the  
22 player's lines and actions are reconstructed, the court must apply an objective test to resolve  
23 the ultimate inquiry: was there a formal arrest or restraint on freedom of movement of the  
24 degree associated with a formal arrest.  
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1 In this case, defendants were seized forcibly from the elevator, shoved up against a  
2 wall, frisked and required to move from place to place by police within the 7<sup>th</sup> Floor of the  
3 hotel, all the while being subjected to questioning designed to elicit information of criminal  
4 activity. "By custodial interrogation, we mean questioning initiated by law enforcement  
5 officers after a person has been taken into custody or otherwise deprived of his freedom of  
6 action in any significant way. *Miranda, supra*, at 444.

7  
8 Interrogation has been defined within this circuit as: "Under all of the circumstances  
9 involved in a given case, the questions are reasonably likely to elicit an incriminating  
10 response from the suspect. *U.S. v. Solano-Godines*, 120 F.3d 957, 961 (9<sup>th</sup> Cir. 1997). Direct  
11 questioning by a police officer that leads an accused to make inculpatory statements is the  
12 most obvious form of impermissible interrogation, but not all direct questions constitute  
13 interrogation. As this court has explained, a definition of interrogation that included any  
14 question posed by a police officer would be broader than that required to implement the  
15 policy of *Miranda* itself . . . only questions reasonably likely to elicit an incriminating  
16 response from the subject amount to interrogation. *U.S. v. Foster*, 227 F.3d 1096, 1102-03,  
17 (9<sup>th</sup> Cir. 2000).

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19 After having escorted Defendant GUERRERO to the room he said he was going to  
20 when stopped, and no answer to the knock on the door occurred, police removed Defendant to  
21 another area on the 7<sup>th</sup> Floor, accused Defendant GUERRERO of lying and continued to  
22 question Defendant GUERRERO that he was really there to go to Room 755. After repeatedly  
23 denying any knowledge of room 755, and when asked about drugs, Defendant GUERRERO  
24 admitted possession of paraphernalia and a small quantity of drugs in defendant TAITANO's  
25 purse which Defendant GUERRERO had given her to hold for him inside a pouch. Defendant

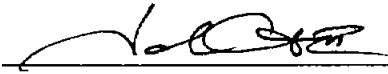
1 GUERRERO had not told Defendant TAITANO what was within the small pouch he had  
2 asked her to hold for him in Defendant TAITANO'S purse. Defendant TAITANO is expected  
3 to move the court to suppress the use of the evidence illegally obtained from her by police in  
4 the illegal seizure of her person.

5 CONCLUSION

6 For the reasons stated above hereinbefore, the court should suppress the statements of  
7 Defendant and all evidence in this case as such evidence is the product of a wrongful seizure  
8 of Defendant GUERRERO and Defendant TAITANO.  
9

10 DATED: OCTOBER 14, 2005.

11 VAN DE VELD SHIMIZU CANTO & FISHER


12   
13 FOR Curtis C. Van de veld, Esq.  
14 Attorney for Defendant  
15 JUSTIN KEITH GUERRERO

16 REQUEST FOR EVIDENTIARY HEARING

17 An evidentiary hearing is requested by Defendant.

18 DATED: OCTOBER 14, 2005.

19 VAN DE VELD SHIMIZU CANTO & FISHER

20   
21 FOR Curtis C. Van de veld, Esq.  
22 Attorney for Defendant  
23 JUSTIN KEITH GUERRERO  
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